



The fundamentals of Directors' and Officers' Liability Insurance

APEX Cyber Risks and Financial Lines Seminar

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Amman, 26 March 2018

Today's Agenda

What is Directors' and Officers' Liability insurance?

Who is Insured?

What is Covered?

Claims examples

Underwriter's risk assessment



What are the duties of the Board?

The Board of Directors have two core fiduciary duties:

1. Duty of Loyalty

- To act in the best interests of the company and to avoid conflicts of interests

2. Duty of Care

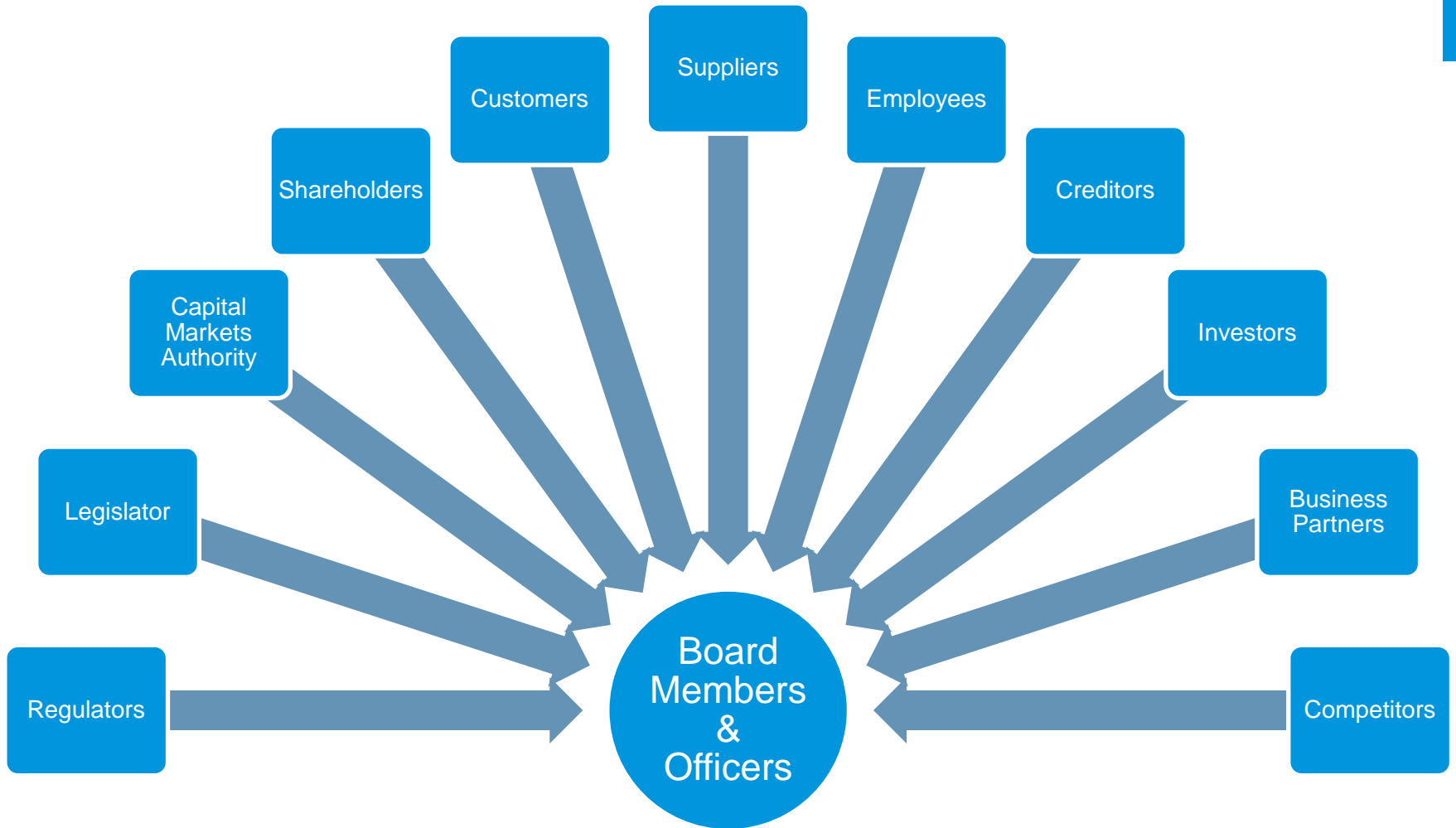
- To exercise reasonable care when they make a decision

The liability of the management is to:

- The company
- The shareholders
- Third parties including creditors



Various Stakeholders



Management Liability (D&O) Insurance

D&O insurance provides indemnity to directors and officers for legal costs, damages and expenses incurred, arising from claims brought against them personally due to wrongful acts.

- *Wrongful Act:*
Any actual or alleged act, error, or omission by an insured person.
- Wrongful acts can include negligence, default, breach of trust, breach of duty, and misrepresentations of insureds in their capacity as directors, officers, and managers.

Professional Indemnity (PI) Insurance

Covers the *Insured* against *Claims* arising out of the provision of (or failure to provide) *Professional Services* to their *clients*.

Also known as Professional Liability or Errors & Omissions insurance.

Who are Insured Persons?

- Any natural person who is, was or during the policy period becomes:
 - A director or officer
 - An employee of the company whilst acting in a managerial or supervisory capacity
 - The spouse of an insured person who is deceased, incompetent or insolvent, for loss arising from a claim for a wrongful act of such insured person.
- Cover includes insured persons of all subsidiary companies*

**A subsidiary company is an entity in which the policyholder either directly or indirectly through one or more other entities:*

- *controls the composition of the board of directors; or*
- *controls more than half of the shareholder voting power; or*
- *holds more than half of the issued share capital*

What is covered?

1) Damages / awards / settlements:

any amount that the insured is liable to pay or amounts that have been settled with Insurers' agreement

2) Defense Costs:

reasonable fees, costs and expenses incurred in the investigation and defence of any claim

Arising out of **Claims for Wrongful Acts**

3) Investigation Costs



Growing need for D&O Insurance in the Middle East

- Greater attention to Corporate Governance / Accountability
- Globalization of business activities
- Legislation and laws are changing / developing
- Gradual transformation of claims culture / increasing awareness of customers
- Growing number of foreign directors / professionals in the Middle East
- Growing number of Middle East claim examples
- Proven reliability of insurance solutions to provide protection

Benefits of buying D&O Insurance

- Directors, Officer and Managers gain security from the knowledge that their personal finances are protected
- In turn, companies are enabled to attract and retain Directors, Officers and Managers

Underwriters' risk assessment

- Industry
- Financial ratio's
- Jurisdictions the company operates in
- Experience of the board of directors
- Outside directorship positions
- Shareholder's structure, including listed vs private
- Merger and acquisition activity
- Years of operation
- Loss history
- Future outlook



Bring on Tomorrow